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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/987,042

Applicant(s)

FOLKMAR, JAN

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/6/04 & 8/16/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 11 and 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11, and 13-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-13 and 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooms (EP 757,006) in view of Parrish et al (3,847,523), Tkac (4,961,517), Berrod (FR 598,674), Inayoshi et al (4,869,915), Wallays (5,931,346), Kitterman (3,157,312), Wechsler (2,320,496), Janik (EP 340,132), Lewis (5,026,194) and Shannon (6,153,238).

In regard to claim 1, Ooms discloses a piping bag comprising a thin disposable flexible pouch with an expressible, viscous medium sealed therein, said pouch collapsing on the expression of said medium therefrom, said pouch having a neck portion adjacent one axial end thereof having a conically reducing transverse cross-section; nozzle means including a funnel-like nozzle base comprising conically inclined wall portions and a spout portion connected in flow relationship therewith; said conically inclined wall portions having surface dislocations thereon; said nozzle base being disposed at least in part within said pouch; said nozzle means further comprising a nozzle cap disposed outside of said pouch and said nozzle base and said nozzle cap including complementary coupling means for selectively coupling said nozzle cap to said nozzle base with portions of said pouch trapped therebetween; and security means covering the outlet of said spout portion to prevent the expression of said

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medium from said pouch. Claim 1 now recites that the nozzle base is in frictional wedged relationship with the neck portion of the bag; that the surface dislocations coact with the pouch to provide an enhanced gripping relationship and "to thereby" retain the nozzle base in its sealed relationship solely by frictional means so as to permit the removal of the nozzle base from the pouch at the time of disposal thereof and the re-use of the nozzle base. Several points are first noted. A "thereby" phrase should follow from a previous positive recitation. That is, a "thereby" clause is a result. To recite "thereby" ... sealed ... solely by frictional means" is not seen to have the previously recited, positive phrase, which achieves this result. Also, "at the time of disposal" and "the re-use of said nozzle base" are statements of intended use. To expedite prosecution, these phrases will be considered. Contrary to what applicant has urged in the remarks, Ooms is not restricted to securing the nozzle base to the pouch only by bonding. In column 4, lines 12 plus, Ooms teaches that joining through sealing is optional ("Optionally, the insert (4) is joined ... through a sealing operation"). In column 3, paragraph 3, Ooms states that "preferably" the insert is connected to the film material by a sealed joint. Thus, Ooms clearly teaches that the insert (applicant's nozzle base can just be inserted into the bag or sealed to the bag. Ooms shows the insert tightly fitted in the bag (e.g. Fig. 2) which fitment would be a frictional wedging of the insert in the bag and the surface dislocations (Ooms' threads (5)) would provide an enhanced gripping relationship. Note, too, even though Ooms discloses providing the insert in the pouch with or without sealing, the sealing embodiment itself provides a frictional arrangement as well and is readable on the claim recitation. The term friction is generic

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and means the tangential force that resists motion or tendency to motion of one body relative to another body. In any case, Parrish et al (3,847,523), Tkac (4,961,517), Berrod (FR 598,674), Inayoshi et al (4,869,915), Wallays (5,931,346), Kitterman (3,157,312), Wechsler (2,320,496), Janik (EP 340,132), Lewis (5,026,194) and Shannon (6,153,238) all teach it was notoriously conventional to employ inserts with piping bags wherein the inserts are held in frictional engagement with the bags usually with surface dislocations. For example, Parrish et al (Figures 1 and 2), Tkac (Fig. 3) and Berrod (Figures 1 and 2) show the bag hugging tightly the surface dislocations on their respective inserts; Inayoshi et al discloses exterior pleats on the insert; Wallays and Kitterman disclose frictional attachment of the inserts; Wechsler (17), Janik (10), Lewis (Fig. 1) and Shannon (42) disclose surface dislocations on the insert associated with the bags. To therefore modify Ooms, if necessary, and provide the surface dislocation/frictional engagement, with or without sealing, would therefore have been obvious. Stated somewhat differently, to modify Ooms and substitute one conventional association means for another conventional association means for its art recognized and applicants' intended function would have been obvious. That is, Ooms teaches associating the insert with or without a welding type sealing, as does the rest of the art taken as a whole. Note, too, since Ooms and the art taken as a whole teach welding type sealing is optional, the inserts of Ooms (and the art taken as a whole) would be removable if not welded. Actually, if it was only spot welded, it would still be removable. In regard to claim 9, which recites that the coupling means are separate from the surface dislocations, the art is replete with examples of such structure as evidence e.g.,

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by Parrish et al, Tkac, Berrod and Lewis. Since Ooms teaches welding is optional, to modify Ooms and employ the surface dislocations separate from the coupling means would therefore have been obvious.

Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 7-13 and 16-25 above, and further in view of Tedeschi et al (6,065,651), who is applied for the reasons given in the Office action mailed March 4, 2004.

Claims 6 and 15 are rejected under 35 USC 103(a) as being unpatentable over the references as applied to claims 1-4, 7-13, and 16-25 above, further in view of Castner ('188) for the reasons given in the Office action mailed March 4, 2004.

Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7-13 and 16-25 above, and further in view of applicants' admission of the prior art for the reasons given in the Office action mailed March 4, 2004.

All of applicant's remarks filed July 6, 2004 have been fully and carefully considered but have either been addressed above or are seen to be moot in view of the new grounds of rejection. Note that although Ooms teaches welding is optional and does mention a flat surface for welding, Massioui (6,000,848), Gross et al (6,273,307) and Chun (6,488,178) disclose welding inserts to bags wherein the welding occurs at the inserts wherein the inserts have surface dislocations (see e.g., Fig. 1, Fig. 4 and Fig. 3B, respectively).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
November 19, 2004

Corrected 11/27/2004

Steven Weinstein

STEVE WEINSTEIN
PRIMARY EXAMINER

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